

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINDA LICKTEIG)	
Claimant)	
VS.)	
)	
ROYAL TERRACE CARE CENTER)	Docket No. 201,890
Respondent)	
AND)	
)	
NATIONAL UNION FIRE INS. CO. OF NY)	
Insurance Carrier)	

ORDER

On April 15, 1997, the application of claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Steven J. Howard dated November 8, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by and through her attorney, Steven D. Treaster of Overland Park, Kansas. The respondent and its insurance carrier appeared by and through their attorney, John B. Rathmel of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) The nature and extent of claimant's injury and/or disability.
- (2) The compensation due.
- (3) Claimant's entitlement to future medical.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Appeals Board finds significant a video tape placed into evidence showing claimant performing physical activities, in particular fast dancing, which claimant swore under oath that she was unable to do. The medical records indicate that claimant showed signs of symptom magnification with both Dr. Mark Bernhardt and Dr. Ira H. Fishman indicating claimant's complaints seemed more severe than the physical findings would suggest. Dr. Fishman, after reviewing the video tape, withdrew all restrictions from claimant finding she suffered no permanency. Dr. Bernhardt agreed that if the subjective complaints upon which he based his functional impairment proved to be inaccurate, then claimant would have no functional impairment.

After reviewing the video tape, the Appeals Board agrees that the complaints registered by claimant appear to be significantly exaggerated. The Administrative Law Judge found claimant to be less than credible and denied her any permanency or future medical treatment based upon a rejection of all or part of claimant's testimony. The Appeals Board finds, based upon the evidence, that claimant has not proven by a preponderance of the credible evidence her entitlement to a permanent award in this matter nor to any future medical treatment. As such, the Award of the Administrative Law Judge should be, and the same is, affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard dated November 8, 1996, should be, and is hereby, affirmed. An award of compensation is herein entered in favor of the claimant, Linda Lickteig against the respondent, Royal Terrace Care Center and its

insurance carrier, National Union Fire Insurance Company of New York for temporary total disability benefits and medical benefits previously provided.

Claimant is further entitled to medical mileage incurred with Dr. Fishman prior to April 17, 1995, at the statutory rate then in effect. Further award is made that claimant is entitled to unauthorized medical treatment not involving Dr. Hopkins functional impairment rating up to the statutory maximum upon presentation of an itemized statement verifying same.

Further award is denied claimant for any permanent partial disability or for future medical treatment for the injuries alleged.

The fees necessary to defray the expense of the administration for the Workers Compensation Act are hereby assessed against the respondent/insurance carrier to be paid direct as follows:

All fees assessed by the certified court reporters in taking and transcribing the evidentiary transcript.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John B. Rathmel, Overland Park, KS
Steven D. Treaster, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director